

CHAPTER V

97. Abetment of a thing.- A person abets the doing of a thing, who-

First.- Instigates any person to do that thing; or

Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.- A person who by willful misrepresentation or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, willfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2. – Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

98. Abettor.- A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.- The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.- To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustration

- (a) A instigated B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.
- (b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.- It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

- (a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.
- (b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. Here, though B was not capable by law of committing an offence. A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

- (c) A instigates B to set fire to a dwelling- house. B, in consequence of the unsoundness of his mind , being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment, provided for that offence.
- (d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession , in good faith, believing it to be A's property B, acting under this misconception, does not take dishonesty, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B and committed theft.

Explanation 4.- The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B is liable to be punished for his offence with the punishment for murder; and , as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.- It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

A concert with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison ; Z dies in consequence, Here, though A and C have not conspired together, Yet C has been engaged in

the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

¹**[108-A. Abetment in India of offences outside India.-** A person abets an offence within the meaning of this Code who, in ²[India] ,abets the commission of any act without and beyond ²[India] which would constitute an offence if committed in ²[India].

Illustration

A, in ² [Indian] , instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.]

99. Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment.- Whoever abets any offence shall ,if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.- An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Illustration

- (a) A offers a bribe to B, a public servant , as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

1. Subs. by Act 26 of 1955, sec. 117 and Sch., for -transportation for life (w.e.f 1-1-1956)

2. The words| British India| have successively been subs. by A.O 1948,the A.O 1950 and Act 3 of 1951, sec. 3 and Sch. To read as above.

(b) A instigates B to give false evidence. B, in consequence of the instigation commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(a) (a) A and B conspire to poison Z. A in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

CLASSIFICATION OF OFFENCE

Punishment –Same as for offence abetted- According as offence abetted is cognizable or non- cognizable –According as offence abetted is bailable or non-bailable –Triable by court by which offence abetted is triable-Non- compoundable.

111. Liability of abettor when one act abetted and different act done.- When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

proviso.- Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Illustrations

(a) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment. A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(b) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A though guilty of abetting the burning of the house, is not

guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

© A instigates B and C to break into an inhabited house at midnight for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

CLASSIFICATION OF OFFENCE

Punishment – Same as for offence intended to be abetted- According as offence abetted is cognizable or non- cognizable –According as offence abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

113. Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.- When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, caused a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Illustration

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

CLASSIFICATION OF OFFENCE

Punishment – Same as for offence committed – According as offence abetted is cognizable or non- According as offence abetted is bailable or non- bailable- Triable by court by which offence abetted is triable – Non-compoundable.

114. A better present when offence is committed.- Whenever any person, who is absent would be liable to be punished as an abettor, is present when the act or offence for

which he would be punished in consequence of the abetment is omitted, he shall be deemed to have committed such act or offence.

CLASSIFICATION OF OFFENCE

Punishment- Same as for offence committed- According as offence abetted is cognizable or non-cognizable- According as offence abetted is bailable or non-bailable -Triable by court by which offence abetted is triable- Non-compoundable .

115. Abetment of offence punishable with death or imprisonment for life – if offence not committed.- Whoever abets the commission of an offence punishable with death or ¹[imprisonment for life], shall, if that offence be not committed in consequence of the abetment , and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine;

If act causing harm be done in consequence.- and if any act for which the abettor is liable in consequence of the abetment, and which cause hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years and shall also be liable to fine.

1. Subs. by Act 26 of 1955, sec. 117 and Sch., for –transportation for life (w.e.f 1-1-1956)

Illustration

A instigates B to murder Z. the offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or ¹[imprisonment for life].therefore A is liable to imprisonment of either description for a term which may extend to seven years and also to a fine; and if any hurt be done to Z in consequence of the abetment , he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

CLASSIFICATION OF OFFENCE

Para I : Punishment- Imprisonment for 7 years and fine- According as offence abetted is cognizable or non-cognizable- non-bailable-Triable by court by which offence abetted is triable- Non-compoundable.

Para II : Punishment- Imprisonment for 14 years and fine- According as offence abetted is cognizable or non-cognizable- non-bailable-Triable by court by which offence abetted is triable- Non-compoundable.

116. Abetment of offence punishable with imprisonment- if offence be not committed.-

Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both;

If abettor or person abetted be a public servant whose duty it is to prevent offence.- and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations

- (a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.
- (b) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.
- (c) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

- (a) (a) B abets the commission of a robbery by A, a police- officer, whose duty it is to prevent that offence. Here , though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

CLASSIFICATION OF OFFENCE

Para I.:- Punishment – Imprisonment extending to a quarter part of the longest term. Provided for the offence, or fine , or both- According to offence abetted is cognizable or non-cognizable- According as offence abetted is bailable or non-bailable-Triable by court by which offence abetted is triable- Non- compoundable.

Para II :- Punishment – Imprisonment extending to half of the longest term, provided for the offence, or fine, or both – According as offence abetted is cognizable or non- cognizable- According as offence abetted is bailable or non-bailable-Triable by court by which offence abetted is triable- Non- compoundable.

117. Abetting commission of offence by the public or by more than ten persons.-

Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished –Triable by court by which offence abetted is triable- Non- compoundable.

Illustration

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place , for the purpose of attacking the members of an adverse sect, while engaged in a procession . A has committed the offence defined in this section.

CLASSIFICATION OF OFFENCE

Punishment – Imprisonment for 3 years, or fine , or both – According as offence abetted is cognizable or non-cognizable – According as offence abetted is bailable or non-bailable-Triable by court by which offence abetted is triable – Non- compoundable.

118. Concealing design to commit offence punishable with death or imprisonment for life. – Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the

commission of an offence punishable with death or ¹[imprisonment for life]; voluntarily conceals, by act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design,

If offence be committed- if offence be not committed.- Shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description, for a term which may extend to three years; and in either case shall also be liable to fine.

1. Subs. by Act 26 of 1955, sec. 117 and Sch., for –transportation for life (w.e.f 1-1-1956)

Illustration

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

CLASSIFICATION OF OFFENCE

Para I : Punishment – Imprisonment for 7 years and fine –According as offence abetted is cognizable or non- cognizable- Non- bailable- Triable by court by which offence abetted is triable-Non- compoundable.

Para II : Punishment – Imprisonment for 3 years and fine –According as offence abetted is cognizable or non- cognizable- Non- bailable- Triable by court by which offence abetted is triable-Non- compoundable.

119. Public servant concealing design to commit offence which it is his duty to prevent.-

Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent;

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design;

If offence be committed.- shall , if the offence be committed , be punished with imprisonment of any description provided or the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

If offence be punishable with death, etc.- or , if the offence be punishable with death or ¹[imprisonment for life], with imprisonment of either description of either description for a term which may extend to ten years;

If offence be not committed.- or if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

Illustration

A , an officer of police , being legally bound to give information of all designs to commit robbery which may come o his knowledge, and knowing that B designs to commit robbery, omits to gives such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is lovable to punishment according to the provision of this section.

CLASSIFICATION OF OFFENCE

Para I : Punishment – Imprisonment extending to half of the longest term provided for the offence or fine or both – According as offence abetted is cognizable or non-cognizable- According as offence abetted is bailable or non-bailable-Triable by court which offence abetted is triable-Non- compoundable .

Para II : Punishment- Imprisonment for 10 years - According as offence abetted is cognizable or non-cognizable- non-bailable- Triable by court by which offence abetted is triable- Non-compoundable.

Para III : Punishment- Imprisonment extending to a quarter part of the longest term provided for the offence or fine, or both - According as offence abetted is cognizable or non-cognizable- Bailable- Triable by court by which offence abetted is triable- Non-compoundable.

1. Subs. by Act 26 of 1955, sec. 117 and Sch., for –transportation for life (w.e.f 1-1-1956)

120. Concealing design to commit offence punishable with imprisonment : Whoever intending to facilitate or knowing it to be likely that he will thereby facilitated the commission of an offence punishable with imprisonment, voluntarily conceals by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

If offence be committed- if offence be not committed.- shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both

CLASSIFICATION OF OFFENCE

Para I : Punishment – Imprisonment extending to a quarter part of the longest term provided for the offence, or fine, or both – According as offence abetted is cognizable or non-cognizable- According as offence abetted is bailable or non-bailable or non-bailable – Triable by court by which offence abetted is triable- Non- compoundable.

Para II : Punishment – Imprisonment extending to a quarter part of the longest term provided for the offence, or fine, or both – According as offence abetted is cognizable or non-cognizable- Bailable – Triable by court by which offence abetted is triable- Non- compoundable.

COMMENTS

Allegations of conspiracy in committing murder by group of 30 to 40 persons even though a strong suspicion raised regarding involvement of respondent where incident led to murder, prosecution evidence inconsistent- reversal of acquittal was proper; State of Haryana v. Pradeep Kumar, 1999 SCC (Cr) 358 : 1999 (1) Crime 8 (SC).

¹[CHAPTER VA]

CRIMINAL CONSPIRACY

120A. Definition of criminal conspiracy.- When two or more persons agree to do, or cause to done,-

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means , such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the illegal act is the ultimate object of such agreement , or is merely incidental to that object].

COMMENTS

- (i) The prosecution is not required to prove that perpetrators agreed to do or cause to be done the illegal act; Mohd. Usman . Hussain Maniyar v. State of Maharashtra, AIR 1918 SC 162: (1918) SC Cr 381 : (1918) Cr LJ 597.
- (ii) The evidence as to transmission of thoughts sharing the unlawful design may be sufficient; Kehar Singh v. State (Delhi Admn.), (1989)Cr LJ : AIR 1988 SC 1883.

¹[**120B. Punishment of criminal conspiracy.-** (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, ² [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall , where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

1. 1. Ins. by Act 8 of 1913, sec. 3.

1. 1. Ins by Act 8 of 1913, sec. 3.

(2) Where is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six month , or which fine or with both]

CLASSIFICATION OF OFFENCE

Para I : Punishment – Same as for abetment of the offence which is the object of the conspiracy- According as the offence which is the object of conspiracy is cognizable or non- cognizable- According

as offence which is object of conspiracy is bailable or non-bailable- Triable by court by which abetment of the offence which is the object of conspiracy is triable- Non-compoundable.

Para II : Punishment – Imprisonment for six months or fine, or both- non-cognizable-Bailable-Triable by Magistrate of the first class- Non-compoundable.

COMMENTS

(i) (i) Before a person can be convicted with the aid of section 34 IPC, the ingredients that are required to be satisfied that he along with others committed a criminal act and act was done in furtherance of common intention; Chandra Kant v. State of Madhya Pradesh, AIR 1999 SC 1557.

(ii) (ii) The offence under section 120 B is an agreement between the parties to do a particular act. Association of relation to lead a conspiracy is not enough to establish to kill the deceased ; Sanjiv Kumar v. State of Himachal Pradesh, 1999

2. Subs. by Act 26 of 1955, sec. 117 and Sch., for –transportation for life (w.e.f 1-1-1956)

AIR (SC) 782: 1999 (1) JT 716.

(iii) To bring home the charge of conspiracy within the ambit of section 120-B of IPC it is necessary to establish conspiracy by direct evidence; Vijayan v. State of Kerala, 1999 (3) SCC 54: 1999 AIR (SC) 1086.